

Appl No.: 10/811,644

Atty. Dkt.
PC-1485**REMARKS/ARGUMENTS**

Favorable consideration of this application is respectfully requested. Applicant has rewritten claim 1, canceled claims 2-3, 13, and added new claims 15-18. Favorable reconsideration of this application is, consequently, earnestly solicited in view of the following remarks.

Applicant acknowledges the fact that the examiner previously indicated the subject claim 1 as containing allowable subject matter in previous office action.

Applicant gratefully appreciates the telephone conversations with Examiner Ghali on December 18, 2008, March 3 and 25, 2009. As discussed with the examiner, Claim 1 has been amended and new claim 15 has been added to clarify the mixed enzymes that can be used with the subject invention. Support for the mixed enzymes can be found for example, in U.S. Patent 4,152,418 to Pader, which has previously been cited as being incorporated by reference with the initial filing of the subject invention.

New claims 15-18 claim the novel method of preparing the formula treatment mixture, which is described on at least pages 6 and 5 of the specification.

Thus, no new matter has been raised with the amendment to the claims and incorporation of new claims 15-18.

Claims 1-3 and 13 were rejected under sec. 112, first paragraph as being "drawn to composition comprising, among other ingredients, mixed protease...." This rejection is now moot in view of the above referenced amendments. As discussed, the original specification had support for the claims as amended. Again, support for the mixed enzymes can be found for example, in U.S. Patent 4,152,418 to Pader, which has previously been cited as being incorporated by reference with the initial filing of the subject invention. New claims 15-18 claim the novel method of preparing the formula treatment mixture, which is described on at least pages 6 and 5 of the specification. Thus, no new matter has been raised with the amendment to the claims and incorporation of new claims 15-18. For at least these reasons, removal of this rejection is respectfully requested.

Claims 1-3, and 13 were rejected under sec. 103 as being unpatentable over a five reference combination of U.S. Publication '941, U.S. Publication '174, U.S. Patent '948,

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WO '943 and U.S. Patent '557. Applicant respectfully disagrees with the conclusion the invention is obvious for several reasons.

Applicant notes the office action admits on page 7, states that the "references do not teach the exact amounts of some ingredients as instantly claimed..." And later on mentions that the combination of the references does not teach all the listed ingredients.

Applicant notes that the novel combination composition set forth in independent claim 1 has now been amended to include "consisting of", and is thus restricted to the novel composition claimed, and not some other combination, and clearly references the novel combination that includes "(j) 0.01% to 1.00%, by weight of an enzyme mixture [] , selected from the group consisting of: Protease, Lipase, Bromelain, Papain and Trypsin."

The five(5) reference combination clearly does not describe, teach or suggest the novel combination set forth in amended claim 1 and new claims 15-18.

Applicant again points out that during the telephone interviews, applicant referenced the subject invention specification on page 8, lines 1-13 which sets forth evidence of actual testing results with the novel combination composition which achieved novel treatment results, that cannot be ignored by the Patent Office. Such test data further supports applicants invention as being patentable and unobvious.

It is clearly improper for the Patent Office to arbitrarily ignore any of the novel features of the subject claims. Under the rules, if the applicant requests the examiner cite the reference(s) showing each and every one of the references that supports a rejection, the examiner must cite the reference or remove the rejection. Applicant again requests the examiner specifically point out which uncited reference(s) describes and teaches these unsubstantiated opinions and assertions raised in the rejection that at least these features are obvious under sec. 103. If actual references are not cited and supplied to the applicant to show these unsubstantiated opinions and assertions mentioned in their rejection. the applicant respectfully requests removal the 103 rejection for at least these reasons alone. Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference needs to be positively included in the statement of the rejection. See *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970). Thus, to maintain a rejection of the subject claims, the missing references must be

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cited and a nonfinal office action must be given since applicant has not seen these uncited references.

Applicant further disagrees with any rationale that relies on hindsight reconstruction of applicant's own specification as a rationale cited for attempting to combine the five references of record. The mere fact that someone in the art can rearrange parts of a reference device to meet the terms of a claim is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for someone of ordinary skill in the art, without the benefit of the inventor's specification to make the necessary changes in the reference device. *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

Again, as noted the current five(5) cited references do not describe, teach, or suggest all the features of the amended claims and new claims.

There is no teaching, nor suggestion for modifying the references of record to include all the novel features of the amended claims. Under well recognized rules of the MPEP (for example, section 706.02(j)), the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438(Fed. Cir. 1991).

There is no suggestion to combine the five references of record, except from using Applicant's invention as a template through a **hindsight** reconstruction of Applicants claims, and a factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning. *Ex Parte Crawford et al*, Appeal 20062429, Decided May 30, 2007." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1397.

Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006). *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d at 1397.

Clearly, the combination of the five references mentioned in the sec. 103 rejection results in substantially different composition combinations of ingredients that would be

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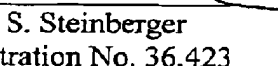
different from the compositions set forth in amended claim 1 and new claims 15-18 which is now restricted to "consisting of".

Thus, for at least these reasons, removal of this rejection is respectfully requested, and a notice of allowance is respectfully requested.

Applicant contends the references cannot be modified to incorporate the features of subject claim 1 and 15-18 without utilizing Applicant's disclosure. As noted above, such hindsight reconstruction is not acceptable to reject the subject claims.

In view of the foregoing considerations, it is respectfully urged that claims 1 and 15-18 be allowed. Such action is respectfully requested. If the Examiner believes that an interview would be helpful, the Examiner is requested to contact the attorney at the below listed number.

Respectfully Submitted;


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3/25/09